

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

QUENTIN LA GRANDE,

Plaintiff,

- v -

Civ. No. 1:18-CV-1501
(LEK/DJS)

TRADEBE ENVIRONMENTAL SERVICES, LLC,
TRADEBE TREATMENT AND RECYCLING
NORTHEAST, LLC and NORLITE,

Defendants.

APPEARANCES:

OF COUNSEL:

QUENTIN LA GRANDE
Plaintiff *Pro Se*
276 Sheridan Avenue
Albany, NY 12210

DANIEL J. STEWART
United States Magistrate Judge

REPORT-RECOMMENDATION and ORDER

The Clerk has sent for review a civil Complaint filed by Plaintiff Quentin La Grande. Dkt. No. 1, Compl. Plaintiff has not paid the filing fee, but instead submitted a Motion to Proceed *in forma pauperis* (“IFP”). Dkt. No. 2, IFP App. By separate Order, this Court granted Plaintiff’s Application to Proceed IFP. Now, in accordance with 28 U.S.C. § 1915(e), the Court will *sua sponte* review the sufficiency of the Complaint.

Section 1915(e) of Title 28 of the United States Code directs that, when a plaintiff seeks to proceed *in forma pauperis*, “the court shall dismiss the case at any time if the court determines that . . . the action or appeal (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B). Thus, it is a court’s responsibility to determine that a plaintiff may properly maintain his complaint before permitting him to proceed further with his action. Generally, a court should not dismiss a complaint if the plaintiff has stated “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

Although the court should construe the factual allegations in the light most favorable to the plaintiff, “the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions.” *Id.* “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.* (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. at 555). “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not ‘show[n]’ – that the pleader is entitled to relief.” *Id.* at 679 (quoting FED. R. CIV. P. 8(a)(2)). A pleading that only “tenders naked assertions devoid of further factual enhancement” will not suffice. *Id.* at 678 (further citing *Bell Atl. Corp. v. Twombly*, 550 U.S. at 555, for the proposition that Federal Rule of Civil Procedure 8 “demands more than an unadorned, the-

defendant-unlawfully-harmed-me accusation”). Allegations that “are so vague as to fail to give the defendants adequate notice of the claims against them” are subject to dismissal. *Sheehy v. Brown*, 335 Fed. Appx. 102, 104 (2d Cir. 2009).

Rule 8 of the Federal Rules of Civil Procedure provides that a pleading which sets forth a claim for relief shall contain, *inter alia*, “a short and plain statement of the claim showing that the pleader is entitled to relief.” *See* FED. R. CIV. P. 8(a)(2). The purpose of this Rule “is to give fair notice of the claim being asserted so as to permit the adverse party the opportunity to file a responsive answer [and] prepare an adequate defense.” *Hudson v. Artuz*, 1998 WL 832708, at *1 (S.D.N.Y. Nov. 30, 1998) (quoting *Powell v. Marine Midland Bank*, 162 F.R.D. 15, 16 (N.D.N.Y. 1995) (other citations omitted)). Rule 8 also provides that a pleading must contain:

- (1) a short and plain statement of the grounds for the court’s jurisdiction . . . ;
- (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and
- (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

FED. R. CIV. P. 8(a).

The Complaint before the Court alleges that Plaintiff was employed by Defendants, but was denied a reasonable accommodation for his disability, retaliated against for complaining about harassment, and ultimately terminated because of his disability. Compl. at pp. 2-3. Plaintiff’s claims are brought pursuant to the Americans with Disabilities Act. *Id.* at p. 1. The Complaint offers no detail beyond the assertion

of these legal claims, however. While factually supported claims under the Americans with Disabilities Act would likely proceed beyond initial review, the Complaint as alleged now fails to provide adequate notice to Defendants of the particular factual basis for the claim and is not compliant with Rule 8.

The Complaint fails to allege certain basic facts required for claims such as those advanced by Plaintiff. For example, a claim alleging the failure to provide reasonable accommodations requires a plaintiff to pled and prove “that he can perform all of the essential functions of his job, with or without reasonable accommodations.” *Levy v. New York State Dep’t of Envtl. Conservation*, 297 F. Supp. 3d 297, 322 (N.D.N.Y. 2018); *see also Kovaco v. Rockbestos-Surprenant Cable Corp.*, 834 F.3d 128, 136 (2d Cir. 2016). Plaintiff makes no allegation regarding this in the Complaint. Plaintiff must also allege that his employer is subject to suit under the statute and that it had notice of Plaintiff’s disability. *Clark v. New York State Elec. & Gas Corp.*, 67 F. Supp. 2d 63, 74 (N.D.N.Y. 1999). The Complaint makes no allegations establishing these elements.

Courts recognize that dismissal of a complaint filed by a *pro se* litigant “without granting leave to amend at least once ‘when a liberal reading of the complaint gives any indication that a valid claim might be stated’” would be inappropriate. *Bruce v. Tompkins Cty. Dep’t of Soc. Servs. ex rel. Kephart*, 2015 WL 151029, at *4 (N.D.N.Y. Jan. 7, 2015) (quoting *Branum v. Clark*, 927 F.2d 698, 704-05 (2d Cir. 1991)). Here, Plaintiff’s Complaint certainly suggests the potential for a valid claim and he may well

be able to cure the deficiencies in his pleading and so it is recommended that Plaintiff be granted leave to amend to do so.

Should Plaintiff be directed by the District Judge to file an amended complaint, I offer the following guidance. Any such amended complaint, which shall supersede and replace in its entirety the previous Complaint filed by Plaintiff, must clearly state the nature of the suit and the basis for this Court's jurisdiction. The body of Plaintiff's amended complaint must contain sequentially numbered paragraphs containing only one act of misconduct per paragraph and should state with specificity the legal claim for relief and the basis for damages. Plaintiff is referred to FED. R. CIV. P. 8 and 10 as to the proper form for his pleadings.

ACCORDINGLY, it is hereby

RECOMMENDED, that this action be *sua sponte* dismissed, but that Plaintiff be granted leave to replead his Complaint; and it is further

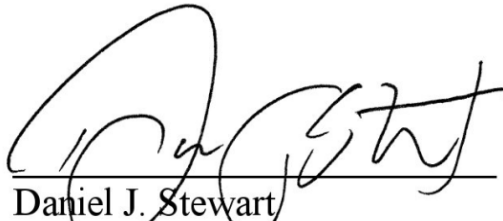
ORDERED, that the Clerk of the Court serve a copy of this Report-Recommendation and Order upon the parties to this action.

Pursuant to 28 U.S.C. § 636(b)(1), the parties have fourteen (14) days¹ within which to file written objections to the foregoing report. Such objections shall be filed

¹ If you are proceeding *pro se* and are served with this Report-Recommendation and Order by mail, three additional days will be added to the fourteen-day period, meaning that you have seventeen days from the date the Report-Recommendation and Order was mailed to you to serve and file objections. FED. R. CIV. P. 6(d). If the last day of that prescribed period falls on a Saturday, Sunday, or legal holiday, then the deadline is extended until the end of the next day that is not a Saturday, Sunday, or legal holiday. FED. R. CIV. P. 6(a)(1)(C).

with the Clerk of the Court. **FAILURE TO OBJECT TO THIS REPORT WITHIN
FOURTEEN (14) DAYS WILL PRECLUDE APPELLATE REVIEW.** *Roldan v.
Racette*, 984 F.2d 85, 89 (2d Cir. 1993) (citing *Small v. Sec'y of Health and Human
Servs.*, 892 F.2d 15 (2d Cir. 1989)); *see also* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72
& 6(a).

Date: February 15, 2019
Albany, New York



Daniel J. Stewart
U.S. Magistrate Judge